

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

VICTOR COLLINS, an Individual, Plaintiff,  
v.  
SAN DIEGO METROPOLITAN TRANSIT SYSTEM; OFFICER D. BELVIS; OFFICER F. MOYA; UNIVERSAL SERVICES OF AMERICA, INC.; AND DOES 1-10, INCLUSIVE, Defendants. } CASE NO. 3:13-cv-0960-AJB-WMC  
} ORDER GRANTING DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S COMPLAINT  
} (Doc. No. 9.)

Presently before the Court is Defendants San Diego Metropolitan Transit System (“MTS”) and Officer D. Belvis’ (collectively, “Defendants”) Motion to Dismiss, (Doc. No. 9), Plaintiff Victor Collins’s (“Plaintiff”) First Amended Complaint, (Doc. No. 5, “FAC”). In accordance with Civil Local Rule 7.1.d.1, the Court finds the motion suitable for determination on the papers and without oral argument. For the reasons set forth below, the Court **GRANTS** Defendants’ Motion.

## BACKGROUND

The instant action arises from an incident that occurred on April 12, 2012, on the San Diego Blue Line trolley. (FAC ¶ 6.) Plaintiff alleges that Officers Belvis, an employee of MTS, and Moya, an employee of Universal Services of America, conducted a fare inspection of Plaintiff's ticket. (*Id.* at ¶¶ 4-6.) Plaintiff further alleges that, after he provided a valid ticket, Officer Belvis hesitated to return the ticket and Officer Moya told

1 Plaintiff “I will deny you service.” (*Id.*) Officers Belvis and Moya then escorted Plaintiff  
 2 off the trolley at the subsequent stop. (*Id.*)

3 As the officers escorted Plaintiff off the trolley, Officer Moya allegedly took  
 4 Plaintiff’s computer case, dropped it on the floor with unnecessary force and then used  
 5 extreme force while applying hand restraints on Plaintiff. (*Id.* at ¶¶ 7-8.) According to  
 6 Officer Belvis’s report, he had been attempting to conduct a welfare check on Plaintiff, who  
 7 was combative and non responsive. (*Id.* at ¶ 18.) After restraining Plaintiff, the officers then  
 8 asked if there were any illegal drugs or weapons in the computer case, if Plaintiff was the  
 9 subject of any outstanding warrants, and if he was under the influence of drugs, alcohol, or  
 10 medication. (*Id.* at ¶¶ 9-10.) After fifty minutes, Officer Williams of the San Diego Police  
 11 Department arrived and Plaintiff was cited for failure to comply with a lawful order. (*Id.*  
 12 at ¶ 12, Ex. A at 4.) On October 19, 2012, Plaintiff appeared at a state trial to argue the  
 13 citation. (*Id.* ¶ 19.) The state court ordered Plaintiff to pay a \$275 fine by working at a non-  
 14 profit organization. (*Id.*)

15 Plaintiff filed the present FAC on May 7, 2013, alleging five causes of action: (1)  
 16 malicious prosecution; (2) abuse of process; (3) violation of civil rights; (4) intentional  
 17 infliction of emotional distress; and (5) damage to personal property. (*Id.* at ¶¶ 18-19, 20-  
 18 21, 22-23, 24-25, 26.) Defendants move this Court to dismiss the action and Plaintiff has  
 19 filed an Objection. (Doc. No. 9 and 10.) Officer Moya is not joined in this Motion, nor has  
 20 he filed an independent motion or answer.

## 21 LEGAL STANDARD

### 22 **I. Motion to Dismiss**

23 Dismissal is appropriate under Federal Rule of Civil Procedure 12(b)(6) when a  
 24 plaintiff’s allegations fail “to state a claim upon which relief can be granted.” Fed. R. Civ.  
 25 P. 12(b)(6). In ruling on a motion to dismiss, the court must “accept all material allegations  
 26 of fact as true and construe the complaint in a light most favorable to the non-moving party.”  
 27 *Vasquez v. L.A. Cnty.*, 487 F.3d 1246, 1249 (9th Cir. 2007). However, courts are not “bound  
 28

1 to accept as true a legal conclusion couched as a factual allegation.” *Ashcroft v. Iqbal*, 556  
 2 U.S. 662, 664 (2009).

3 A Rule 12(b)(6) dismissal “can be based on the lack of a cognizable legal theory or  
 4 the absence of sufficient facts alleged under a cognizable legal theory.” *Balistreri v.*  
 5 *Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). To survive a motion to dismiss,  
 6 a plaintiff must plead “enough facts to state a claim to relief that is plausible on its face.”  
 7 *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Plausibility does not equate to  
 8 probability, but it requires “more than a sheer possibility that a defendant has acted  
 9 unlawfully.” *Iqbal*, 556 U.S. at 664. “A claim has facial plausibility when the plaintiff  
 10 pleads factual content that allows the court to draw the reasonable inference that the  
 11 defendant is liable for the misconduct alleged.” *Id.* Dismissal of claims that fail to meet this  
 12 standard should be with leave to amend unless it is clear that amendment could not possibly  
 13 cure the complaint’s deficiencies. *See Steckman v. Hart Brewing, Inc.*, 143 F.3d 1293, 1296  
 14 (9th Cir. 1998).

## 15 DISCUSSION

### 16 I. Defendants’ Motion to Dismiss

17 Defendants move to dismiss the FAC in its entirety on grounds that Officer Belvis and  
 18 MTS have qualified immunity, and even if Plaintiff pierces that immunity, each of Plaintiff’s  
 19 claims independently fail. (*Id.*) The Court addresses Plaintiff’s claims individually,  
 20 discussing qualified immunity as necessary.

#### 21 A. Malicious Prosecution

22 Plaintiff’s first claim alleges that Officer Belvis “took a malicious interest in  
 23 removing Plaintiff from the trolley” and “wrongfully deprived Plaintiff of his Fourteenth  
 24 Amendment right to liberty for reasons that lack probable cause.” (FAC ¶ 18.) Defendants  
 25 argue that Plaintiff’s prima facie claim for malicious prosecution fails because he did not  
 26 allege any facts indicating the previous action had been resolved in his favor. (Doc. No. 9  
 27 at 5.) Additionally, Defendants argue that Officer Belvis and MTS are immune from  
 28 liability. (*Id.* at 6.)

1       A plaintiff must allege both the elements of a state law malicious prosecution claim  
 2 and that the prosecution was brought for the purpose of denying a specific constitutional  
 3 right. *Usher v. City of Los Angeles*, 828 F.2d 556, 562 (9th Cir. 1987). Under California  
 4 law, a plaintiff must establish “the prior action (1) was commenced by or at the direction of  
 5 the defendant and was pursued to a legal termination in his, plaintiff’s, favor; (2) was  
 6 brought without probable cause; and (3) was initiated with malice.” *Sheldon Appel Co. v.*  
 7 *Albert & Oliker*, 47 Cal.3d 863, 871 (1989) (internal citations omitted); *Sagonowsky v.*  
 8 *More*, 64 Cal.App.4th 122, 128 (1998). A plaintiff must allege more than a mere conclusory  
 9 accusation of malice. *See Iqbal*, 556 U.S. at 664.

10       As alleged, Plaintiff’s claim fails. First, Plaintiff has not shown a legal proceeding  
 11 resolving in his favor. *See Sheldon Appel Co.*, 47 Cal.3d at 871. Instead, the state court  
 12 proceeding terminated against him and Plaintiff admits the court ordered him to pay a \$275  
 13 fine.<sup>1</sup> (FAC ¶ 19.) Second, Plaintiff has not shown defendant lacked probable cause to  
 14 bring the legal proceeding. *See Id.* Instead, Plaintiff notes that Officer Belvis declared in  
 15 his report that “Plaintiff yelled at him and made menacing gestures toward Officer Belvis’s  
 16 face as if Plaintiff was going to hit his face with a ticket.” (FAC ¶ 18.) Plaintiff does not  
 17 provide any facts to contradict this report and fails to show why the officer lacked probable  
 18 cause.

19       Additionally, Defendants argue that Officer Belvis and MTS are immune from  
 20 liability for a claim of malicious prosecution. (Doc. No. 9 at 6.) Under California law, “A  
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22       <sup>1</sup> The Court notes that Plaintiff alleges the proceeding resulted in a favorable  
 23 termination in the Reply to Defendant’s Motion to Dismiss. (Doc. No. 10 at 4.)  
 24 Specifically, Plaintiff attaches a copy of the state appellate court ruling that shows the  
 25 court reversed judgement of the lower court and remanded for further proceedings. (*Id.*  
 26 at 13.) However, a remand for further proceedings does not constitute a favorable  
 27 termination. *See Sheldon Appel Co.*, 47 Cal.3d at 871. Without additional facts with  
 28 regards to the remanded action, this Court cannot determine if the state court proceeding  
 terminated in Plaintiff’s favor. Moreover, the Court declines to consider new facts,  
 issues, or arguments in a reply brief that were not presented in the moving papers. *See*  
*United States v. Romm*, 455 F.3d 990, 997 (9th Cir. 2006) (noting “[parties] cannot raise  
 a new issue for the first time in their reply briefs”); *Cedano-Viera v. Ashcroft*, 324 F.3d  
 1062, 1066 n. 5 (9th Cir. 2003) (refusing to “consider new issues raised for the first time  
 in a reply brief”); *Bazuaye v. INS*, 79 F.3d 118, 120 (9th Cir. 1996) (holding “[i]ssues  
 raised for the first time in the reply brief are waived”).

1 public employee is not liable for injury caused by his instituting or prosecuting any judicial  
 2 or administrative proceeding within the scope of his employment, even if he acts maliciously  
 3 and without probable cause.” West’s Ann. Cal. Gov. Code § 821.6; *see also Scannell v.*  
 4 *County of Riverside*, 152 Cal.App.3d 596, 604 (Cal.App. 1984). Likewise, if the officer is  
 5 immune from a claim of malicious prosecution, so is the entity employing him. West’s Ann.  
 6 Cal. Gov. Code § 815.2 (d); *Scannell*, 152 Cal.App. at 604.

7 Plaintiff alleges that Officer Belvis maliciously removed Plaintiff from the trolley,  
 8 questioned, and then cited him. (FAC ¶ 18-19.) Plaintiff fails to show how such actions fall  
 9 outside the scope of an officer’s employment. Therefore, as alleged, Officer Belvis would  
 10 be entitled to immunity § 821.6. Likewise, MTS would also be immune under § 815.2 (d).  
 11 Thus, the Court DISMISSES Plaintiff’s claim of malicious prosecution with leave to amend.

12 **B. Abuse of Process**

13 Plaintiff’s second claim alleges Defendants “improperly abused his authority when  
 14 he removed Plaintiff from the trolley after Plaintiff presented his valid fare.” (FAC ¶ 21.)

15 Under California law, a plaintiff bringing an abuse of process claim must show the  
 16 defendant “(1) contemplated an ulterior motive in using the judicial process, and (2)  
 17 committed ‘a willful act in the use of th[at] process not proper in the regular conduct of the  
 18 proceedings.’ *Estate of Tucker ex rel. Tucker v. Interscope Records, Inc.*, 515 F.3d 1019,  
 19 1037 (9th Cir. 2008) (quoting *Oren Royal Oaks Venture v. Greenberg, Bernhard, Wiess &*  
 20 *Karma, Inc.*, 42 Cal.3d 1157, 1159 (1986)). An abuse of process claim “requires misuse of  
 21 a judicial process.” *Estate of Tucker*, 515 F.3d at 1037 (quoting *Stolz v. Wong Comm’cs*  
 22 *Ltd. P’ship*, 25 Cal.App.4th 1811, 1822 (1994)). An abuse of process claim differs from a  
 23 malicious prosecution claim because “the gist of the tort is not commencing an action or  
 24 causing process to issue without justification, but misusing, or misapplying process justified  
 25 in itself for an end other than what it was designed to accomplish.” *Garcia v. City of*  
 26 *Merced*, 637 F.Supp.2d 731, 750 (E.D. Cal. 2008) (citing Prosser, *Law of Torts* 856 (4th ed.  
 27 1971)).

1 Plaintiff alleges that Officers Belvis and Moya abused their authority and used an  
 2 unnecessary amount of force. (FAC ¶ 21.) However, Plaintiff does not allege any misuse  
 3 of a judicial process, for an end other than what it was designed to accomplish, normally  
 4 found in an abuse of process claim. *See, e.g., Cantu v. Resolution Trust Corp.*, 4  
 5 Cal.App.4th 857, 885 (1992) (plaintiff alleged abuse of process when defendant allegedly  
 6 filed an improper interpleader to stay the action); *Hernandez v. Cate*, 918 F.Supp.2d 987,  
 7 1000 (C.D. Cal. 2013) (defendant alleged abuse of process when plaintiff allegedly filed a  
 8 third frivolous action on the same issues and facts); *Vierra v. California Highway Patrol*,  
 9 644 F.Supp.2d 1219, 1245-46 (E.D. Cal. 2009) (plaintiff alleged abuse of process when  
 10 defendants allegedly used the worker’s compensation claim appeals process to conduct sham  
 11 investigations). Therefore, the Court DISMISSES Plaintiff’s second claim of an abuse of  
 12 process with leave to amend.<sup>2</sup>

13 **C. Violation of Civil Rights**

14 Plaintiff’s third claim alleges that all defendants violated Plaintiff’s civil rights. (FAC  
 15 ¶ 22-23.) In response, Defendants argue that Plaintiff has not adequately pled a civil rights  
 16 claim, furthermore both Officer Belvis and MTS are entitled to qualified immunity. (Doc.  
 17 No. 9 at 10-13.) The Court first examines the officer’s individual liability and then  
 18 examines MTS’s liability as a supervisor.

19 **1. Officer Belvis and Officer Moya’s Individual Liability**

20 As to the individual officer, Plaintiff alleges that Officer Belvis targeted him on the  
 21 basis of racial profiling and that both officers violated his right to remain silent, his right to  
 22 liberty, and his Eighth Amendment rights. (FAC ¶¶ 22-23.) To state a claim under Section  
 23 1983, a plaintiff must allege sufficient facts to show: (1) a person acting “under color of  
 24 state law” committed the conduct at issue, and (2) the conduct deprived the plaintiff of some  
 25 right, privilege, or immunity protected by the Constitution or laws of the United States. 42  
 26 U.S.C. § 1983; *Shah v. County of Los Angeles*, 797 F.2d 743, 746 (9th Cir. 1986).

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 28 <sup>2</sup> The Court does not address Defendants’ argument that immunity from liability  
 against malicious prosecution claims extends to abuse of process claims because that  
 argument is moot in light of the Court’s ruling.

1 As previously noted, claims must also conform to Rule 8's pleading standards. *See*  
 2 Fed. R. Civ. Proc. 8. A complaint must contain more than "threadbare recitals of the  
 3 elements of a cause of action, supported by mere conclusory statements." *Iqbal*, 556 U.S.  
 4 at 678. Rule 8 is designed to provide defendants with fair notice of the claims and the  
 5 factual allegations supporting those claims. *See McKeever v. Block*, 932 F.2d 795, 798 (9th  
 6 Cir. 1991).

7 Plaintiff's claims are vague, conclusory, and do not provide fair notice to defendants  
 8 of what right the Defendants allegedly violated. First, Plaintiff "strongly believes he was  
 9 targeted for racial profiling." (FAC ¶ 22.) Second, Plaintiff alleges that Officers Belvis and  
 10 Moya "presented a willful intent to violate Plaintiff's federal rights to liberty,"  
 11 "demonstrated a clear disrespect," violated "Plaintiff's right to remain silent," violated "his  
 12 right to liberty" and "treated Plaintiff's property with deliberate indifference, in violation  
 13 of Plaintiff's Eighth amendment right." (sic) (*Id.* at ¶ 23.) Plaintiff's two paragraphs of  
 14 allegations are a list of conclusory allegations that merely recites constitutional protections  
 15 spanning several Constitutional Amendments. Therefore, the Court DISMISSES Plaintiff's  
 16 third cause of action as to the individual officer with leave to amend. The Court notes that  
 17 each alleged civil rights violation should receive its own section.<sup>3</sup>

18 **2. MTS's Liability as a Supervisor**

19 With respect to Plaintiff's claims against MTS, a local government entity "may not  
 20 be held vicariously liable for the unconstitutional acts of its employees under the theory of  
 21 *respondeat superior.*" *Gillette v. Delmore*, 979 F.2d 1342, 1346 (9th Cir. 1992). However,  
 22 local government entities may be subject to liability under Section 1983 where the alleged  
 23 constitutional violation results from an official policy or custom. *See Monell v. Dep't of  
 24 Soc. Servs.*, 436 U.S. 658, 690 (1978).

25 The Ninth Circuit sets forth three ways a plaintiff could establish vicarious liability  
 26 against a local government entity. *See Fuller v. City of Oakland, Cal.*, 47 F.3d 1522, 1534  
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28 <sup>3</sup> The Court does not address Defendant's qualified immunity argument because  
 the argument is moot.

(9th Cir. 1995) First, a plaintiff may show liability “by proving that a city employee committed the alleged violations pursuant to the city’s official policy or custom.” *Id.* Second, a plaintiff may show “that, rather than being the product of general official policy, on a given occasion the conduct was the result of a ‘deliberate choice . . . made from among various alternatives by the official or officials responsible for establishing final policy with respect to the subject matter in question.’” *Id.* (citing *Pembaur v. City of Cincinnati*, 475 U.S. 469, 483-84 (1986)). Third, a plaintiff could demonstrate that “an official policymaker either delegated policymaking authority to a subordinate or ratified a subordinate’s decision, approving the ‘decision and the basis for it.’” *Id.* (citing *City of St. Louis v. Praprotnik*, 485 U.S. 112, 126-27 (1988)).

Plaintiff has failed to allege facts that would establish liability under any of these three prongs. The Court DISMISSES Plaintiff’s third claim as to MTS with leave to amend, provided if Plaintiff can sufficiently allege facts showing vicarious liability.

#### **D. Intentional Infliction of Emotional Distress**

Plaintiff’s fourth claim alleges Officers Belvis and Moya intentionally inflicted emotional distress because “Plaintiff’s hands were bound with unreasonable force by Officer Moya, and his laptop was thrown by Officer Moya so forcefully that it is now broken.” (*Id.* at 24-25.)

Under California law, to establish a claim of intentional infliction of emotional distress (“IIED”) a plaintiff must prove “(1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff’s suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant outrageous conduct” to make a claim of intentional emotional distress. *Christensen v. Superior Court*, 54 Cal.3d 868, 903 (1991) (internal quotation omitted). Outrageous conduct “must be so extreme as to exceed all bounds of that usually tolerated in a civilized community.” *Id.* at 904. The distress must be so severe that “no reasonable [person] in a civilized society

1 should be expected to endure it.” *Fletcher v. W. Nat'l Life Ins. Co.*, 10 Cal.App.3d 376, 397  
 2 (1970).

3 Plaintiff alleges that, as a result of his detention by Officer Belvis, he was “57 minutes  
 4 late to work” and “has had to deal with severe amounts of stress as a result of the abuse that  
 5 he suffered unnecessarily.” (FAC ¶¶ 24-25.) Given the facts as pled, the Court finds no  
 6 cognizable claim for IIED against the officers. Amongst other deficiencies, Plaintiff fails  
 7 to allege facts amounting to extreme conduct and fails to allege the officers acted with intent  
 8 or reckless disregard. Therefore, the Court dismisses Plaintiff’s fourth claim as to Officer  
 9 Belvis with leave to amend.

10 Moreover, Plaintiff fails to allege any facts that would establish direct liability for  
 11 MTS, or mention MTS at all, in the pleading. Although an employer can be vicariously  
 12 liable for the wilful and malicious torts that employees commit within the scope of their  
 13 employment. *Fisher v. San Pedro Peninsula Hosp.*, 214 Cal.App.3d 590, 618 (1989). The  
 14 Court has dismissed the claim of IIED against MTS’s employee, Officer Belvis, MTS cannot  
 15 be liable under the theory of respondeat superior. Therefore, the Court DISMISSES  
 16 Plaintiff’s fourth claim as to MTS with leave to amend, provided if Plaintiff can sufficiently  
 17 allege facts connecting MTS to the claim.

18 **E. Conversion**

19 Plaintiff’s fifth claim alleges Officer Moya took his computer case and intentionally  
 20 threw it to the ground with a great amount of force causing the computer to break. (*Id.* at  
 21 ¶ 26.) Under California law, to establish a claim for conversion a plaintiff must show “(1)  
 22 his ownership or right to possess the property at the time of the conversion; (2) that the  
 23 defendant disposed of the plaintiff’s property rights or converted the property by a wrongful  
 24 act, and (3) damages.” *Bank of N.Y. v. Fremont Gen. Corp.*, 523 F.3d 902, 914 (9th Cir.  
 25 2008).

26 In the present case, Plaintiff fails to allege any facts showing how Officer Belvis or  
 27 MTS disposed of his property rights. Plaintiff alleges that “Officer Moya took possession  
 28 of Plaintiff’s computer case and threw it intentionally.” (FAC ¶ 26.) The alleged force

1 caused the computer to break. (*Id.*) However, Plaintiff does not allege any involvement by  
2 Officer Belvis in breaking the computer. Therefore, the Court and DISMISSES Plaintiff's  
3 claim of conversion with respect to Officer Belvis with leave to amend. As with the  
4 reasoning stated above, the Court also DISMISSES the claim against MTS with leave to  
5 amend.

6 **CONCLUSION**

7 For the reasons set forth above, the Court GRANTS Defendants' motion to dismiss.  
8 (Doc. No. 9.) Plaintiff shall have thirty (30) days to file an amended complaint addressing  
9 the deficiencies noted herein. No new parties or claims may be added without leave of  
10 Court. Failure to file an amended complaint by the stated time will result in dismissal of the  
11 action without prejudice.

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13 IT IS SO ORDERED.

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15 DATED: November 7, 2013

16   
17 Hon. Anthony J. Battaglia  
U.S. District Judge

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